STIPULATED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 666.

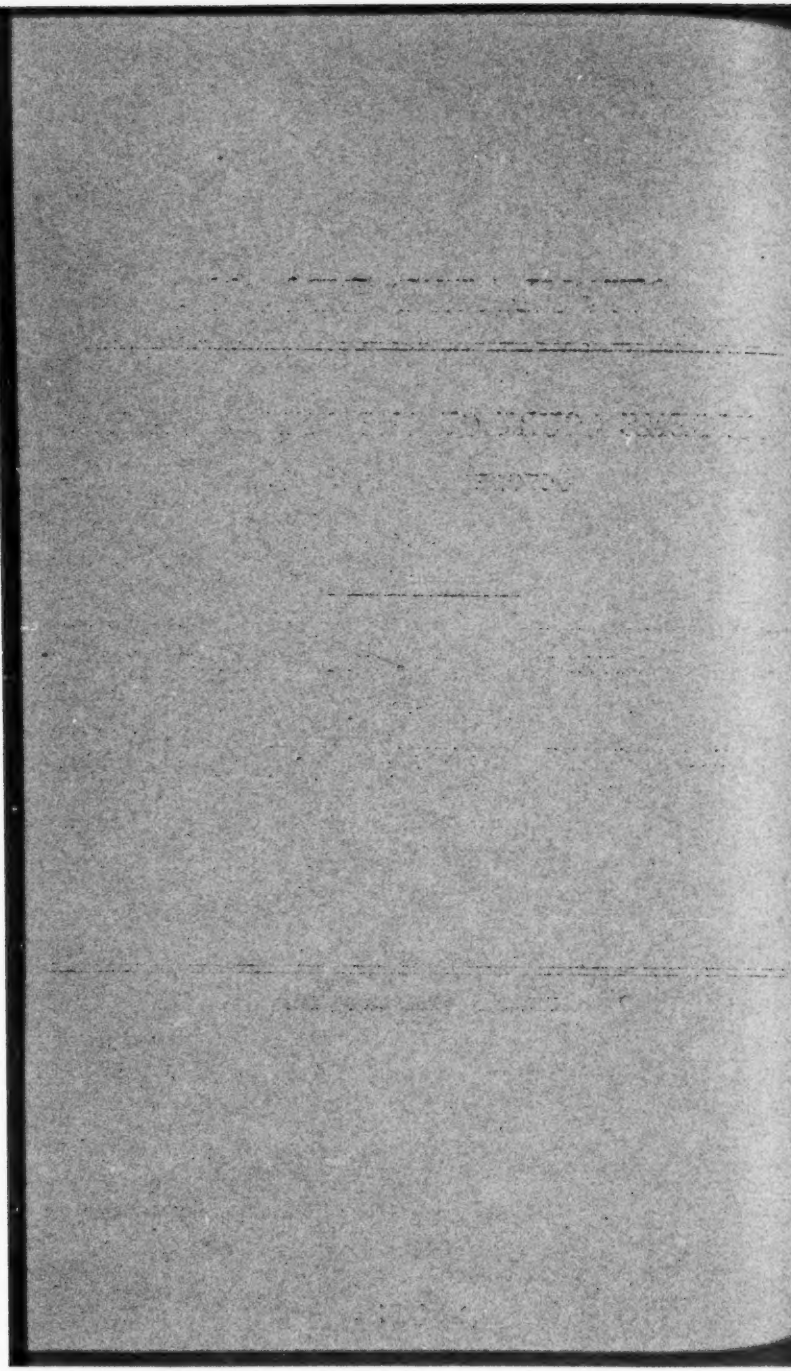
THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

AMERICAN RAILWAY EXPRESS COMPANY AND SEABOARD AIR LINE RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

FILED NOVEMBER 26, 1923.



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1 In the Supreme Court of the United States.
October Term, 1923.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, appellants,
vs.
AMERICAN RAILWAY EXPRESS COMPANY AND SEABOARD AIR LINE RAILWAY COMPANY, appellees. } No. 666.

SOUTHEASTERN EXPRESS COMPANY, APPELLANT,
vs.
AMERICAN RAILWAY EXPRESS COMPANY AND SEABOARD AIR LINE RAILWAY COMPANY, appellees. } No. 667.

SOUTHERN TRAFFIC LEAGUE, ATLANTA FREIGHT BUREAU and Southern Fisheries Association, appellants,
vs.
AMERICAN RAILWAY EXPRESS COMPANY AND SEABOARD AIR LINE RAILWAY COMPANY, appellees. } No. 668.

Stipulation for printing.

Inasmuch as the transcripts (with the exception of the appeal papers) in the foregoing appeals are triplicates, and in order to avoid unnecessary printing, by their respective counsel the parties stipulate:

1. In No. 667 the transcript shall be printed in full and shall stand as the printed transcript for the hearing of that appeal.

2. In No. 666 and No. 668 all parts of the transcripts preceding the petitions for appeal shall be omitted from the printing; in each the printing shall commence with and include the petition for appeal and shall embrace all documents following, except in Nos. 666 and 668 the statement of the evidence shall not be reprinted.

2 3. The printed transcript in No. 667 (minus the appeal papers in that case and the printed appeal papers in No. 666 and No. 668 shall constitute and stand as the printed transcripts for the hearing of the appeals in No. 666 and No. 668.

4. This stipulation is entered into without prejudice to the contentions of the American Railway Express Company that only one

appeal should have been taken in this matter, and all the appellants should have been properly made parties thereto.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General, for the United States, No. 666.
P. J. FARRELL,
Solicitor for the Interstate Commerce Commission, No. 666.
SANDERS McDANIEL,
CHARLES J. RIXEY,
Solicitors for Appellant, No. 667.
CHALLEN B. ELLIS and
CHAS. E. COTTERILL,
Solicitors for Appellants, No. 668.
H. P. MARX,
T. M. CUNNINGHAM, JR.,
ROBERT C. ALSTON,
Solicitors for American Railway Express Co.
HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Solicitors for all Appellees.

190 In the District Court of the United States for the Northern District of Georgia.

AMERICAN RAILWAY EXPRESS COMPANY, Complainant, *v.* THE UNITED STATES OF AMERICA, Defendant, and Interstate Commerce Commission, intervening defendant.	In Equity, No. 245.

Petition for appeal by United States of America and Interstate Commerce Commission.

Filed Oct. 26, 1923.

United States of America, defendant, and Interstate Commerce Commission, intervening defendant, feeling themselves aggrieved by the order or decree of the District Court, made and entered October 11, 1923, granting the interlocutory injunction, pray an appeal to the Supreme Court of the United States therefrom.

The particulars wherein they consider the order or decree erroneous as set forth in the assignment of errors on file to which reference is made.

Defendants pray that a transcript of the record, proceedings, and papers on which the order or decree was made and entered,

duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

C. P. GOREE,
Assistant United States Attorney, Northern District of Georgia.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
P. J. FARRELL,
Solicitor for the Interstate Commerce Commission.

[File indorsement omitted.]

191 In United States District Court.

Assignment of errors by and on behalf of the United States and Interstate Commerce Commission.

Filed Oct. 26, 1923.

United States of America, defendant, and Interstate Commerce Commission, intervening defendant, now come by their respective counsel, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the order or decree of the District Court of October 11, 1923, granting the interlocutory injunction.

The District Court erred:

I. In granting the application for interlocutory injunction.

II. In entering the following order, viz: That the execution and enforcement of the order of the Interstate Comcerce Commission set forth in the petition be, and the same is hereby, enjoined pending the further hearing of this case, and until the further order of the court.

III. In holding and adjudging that, under the acts to regulate commerce and the various and sundry acts amendatory thereof and supplementary thereto, the Interstate Commerce Commission was without power or authority to enter the order.

IV. In holding and adjudging that the American Railway Express Company is a "carrier by railroad," within the meaning of paragraph (4) of section 15 of the interstate commerce act.

V. In substituting its judgment for the judgment of the Interstate Commerce Commission on a subject matter committed to the exclusive jurisdiction of the commission.

192 VI. In not denying the application for interlocutory injunction.

Wherefore, defendants, and each of them, pray that the order or decree of the District Court may be reversed, annulled, and set

aside, with directions that the interlocutory injunction shall be dissolved and the bill of complaint dismissed, and for such other and further order as may be appropriate.

C. P. GOREE,
Assistant United States Attorney,
Northern District of Georgia.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
P. J. FARRELL,
Solicitor for the Interstate
Commerce Commission.

[File endorsement omitted.]

193 In United States District Court.

Order allowing appeal of United States of America and Interstate Commerce Commission.

Filed Nov. 3, 1923.

In the above-entitled cause, United States of America, defendant, and Interstate Commerce Commission, intervening defendant, having made and filed their petition praying an appeal to the Supreme Court of the United States from the order or decree of the District Court granting the interlocutory injunction, and having also made and filed an assignment of errors, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and citation made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said order or decree was made and entered to the Supreme Court of the United States.

This October 31st, 1923.

N. P. BRYAN,
United States Circuit Judge.
SAM'L H. SIBLEY,
ROBERT T. ERVIN,
United States District Judges.

[File endorsement omitted.]

194 In United States District Court.

Notice of appeal to Attorney General of Georgia.

Filed Nov. 3, 1923.

To the Honorable George M. Napier, Attorney General of the State of Georgia:

You are hereby notified that the defendant and intervening de-

of the District Court granting the interlocutory injunction to the Supreme Court of the United States and that the order allowing the appeal makes the citation returnable within thirty (30) days from the date thereof.

This notice is given you pursuant to urgent deficiencies act, October 22, 1913 (38 Stat. 221).

C. P. GOREE,
Assistant United States Attorney,
Northern District of Georgia.

I hereby acknowledge receipt of a copy of the above notice this 2d day of November, A. D. 1923.

GEORGE M. NAPIER,
Attorney General of the State of Georgia.

[File endorsement omitted.]

195 In the District Court of the United States for the Northern District of Georgia.

[Title omitted.]

Præcipe for record.

Filed Nov. 5, 1923.

To the clerk:

Please prepare a transcript of the record in the above-entitled cause in the matter of an appeal of the United States of America and Interstate Commerce Commission and include therein, in the order given below, the following, viz:

1. Bill of complaint.
2. Intervening petition of Seaboard Air Line Railway and order allowing the same.
3. Application for interlocutory injunction and affidavits in support thereof.
4. Intervention, appearance of counsel, and answer of Interstate Commerce Commission.
5. Motion of United States to adopt answer of the commission and order thereon.
6. Intervention of Southern Traffic League, Atlanta Freight Bureau, and Southern Fisheries Association, and order allowing same.
7. Intervention of Southeastern Express Company, order allowing same, and its answer.
8. Temporary restraining order, September 19, 1923.
9. Order granting interlocutory injunction, October 11, 1923.
10. Opinion of the court and dissenting opinion, October 11, 1923.
11. Petition for appeal.

196 12. Assignment of errors.

13. Order allowing appeal.

14. Citation.

15. Notice to Attorney General of Georgia.
16. Præcipe for record.
17. Stipulation as to record in the Supreme Court of the United States on appeals thereto.

C. P. GOREE,
Assistant United States District Attorney,
Northern District of Georgia.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
P. J. FARRELL,
Solicitor for Interstate Commerce Commission.

Due and legal service of the within and foregoing præcipe acknowledged. Copy of same received, and all further service waived. This 5 day of November, 1923.

H. S. MARX,
T. M. CUNNINGHAM, Jr.,
ROBT. C. ALSTON,
Attorneys for Appellee,
American Railway Express Company.
HOLLINS N. RANDOLPH,
ROBT. S. PARKER,
Attorneys for Appellee,
Seaboard Airline Railway Company.

[File endorsement omitted.]

197 In United States District Court.

Amendment and Supplement to Præcipe.

Filed Nov. 9, 1923.

To the clerk:

Come now the United States of America and Interstate Commerce commission, joint appellants, and direct the amendment of the præcipe for record filed by them in the above-styled cause on November 5th, 1923, in connection with their appeal to the Supreme Court of the United States from the order or decree of October 11th, 1923, granting an interlocutory injunction, such amendment and supplement to be as follows:

1.

By striking paragraph 3, as the same appears in the original præcipe, and adding in lieu thereof —

"3.

"Application for interlocutory injunction and statement of evidence given at the hearing of such application, which statement of the evidence is to be included in the record on appeal, and which has been lodged in your office at the time of the filing of this amended præcipe under equity rule 75–B, together with stipulation of coun-

sel, acknowledgement of service and order of court approving such statement of the evidence."

2.

By striking from such original præcipe paragraph 17 reading as follows:

"17.

"Stipulation as to record in the Supreme Court of the United States on appeals thereto."

3.

By adding to the præcipe another specification as follows:

210 "Amendment and supplement to præcipe for record."

Pursuant to the foregoing, you are requested to omit from the transcript of record on this appeal the portions of the record to which the stricken specifications relate, and to add to such transcript the record specified herein under "3" and "16–A."

C. P. Goree,
Assistant United States Attorney,
Northern District of Georgia.

Blackburn Esterline,
Assistant to Solicitor General.

P. J. Farrell,
Solicitor for Interstate Commerce Commission.

Service of the within and foregoing amended and supplemental præcipe acknowledged. Copy of the same received.

Alston, Alston, Foster & Moise,
Lawton & Cunningham,
Attys. for Am. Ry. Ex. Co.

H. S. Marx,
Attorney for Appellee, American Railway Express Company.

This the 9th day of November, 1923.

H. N. Randolph,
R. S. Parker,
Attorneys for Appellee, Seaboard Air Line Railway Company.

[File endorsement omitted.]

211 *Citation in usual form showing service on Marx, Cunningham, Austin, Randolph, and Parker.*

Filed Nov. 3, 1923.

Clerk's Certificate.

United States of America,
Northern District of Georgia.

I, Olin C. Fuller, Clerk of the District Court of the United States for the Northern District of Georgia, do hereby certify that the fore-

going and attached 211 pages contains a true copy of the original record, the assignment of errors, and of all of the proceedings had, in the case of American Railway Express Company et al, complainants, against the United States of America et al, defendants, as designated in the præcipe filed therein, except that the original citation is attached hereto in the stead of a copy thereof.

In testimony whereof I hereunto set my hand and the seal of the said District Court at Atlanta, Georgia, this the 20th day of November, A. D., 1923.

[SEAL.]

OLIN C. FULLER,
Clerk, United States District Court
for the Northern District of Georgia.

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